



Federal Communications Commission
Washington, D.C. 20554

MAR 13 1998

The Honorable Judd Gregg
United States Senate
393 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Gregg:

Thank you for your letter dated January 20, 1998, on behalf of your constituents, Timothy J. Thompson of Rochester, New Hampshire, and Gossett McRae of Goffstown, New Hampshire, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their communities. Your constituents' letter refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituents' letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Acting Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

JUDD GREGG
NEW HAMPSHIRE

CHIEF DEPUTY WHIP

COMMITTEES:

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United States Senate

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January 20, 1998

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Ms. Karen Kornbluh, Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, DC 20554

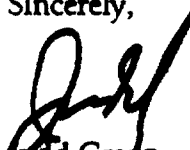
WTK
9-1-98
9-14

Dear Ms. Kornbluh:

Enclosed are copies of the letters I sent you on November 17, 1997, regarding constituents of mine, Timothy Thompson and Gossett McRae, concerning the Federal Communications Commission's actions regarding local zoning of cellular, radio, and television towers. This is an important concern that warrants consideration; as of this date, I have not yet received a response.

Your prompt attention to this matter would be greatly appreciated. Thank you again for your assistance.

Sincerely,


Judd Gregg
U. S. Senator

JG/jca
Enclosures



PLANNING DEVELOPMENT AND ZONING DEPARTMENT

City Hall - Second Floor

31 Waterfield Street

ROCHESTER, NEW HAMPSHIRE 03867-1917

(603) 336-1338

City Planning
Community Development
Economic Development
Zoning Department

October 30, 1997

Senator Judd Gregg

Senator Robert Smith

Representative John Sununu

Dear Senator Gregg, Senator Smith, and Representative Sununu:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have "the exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even have to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on the other grounds, such as impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly, the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.



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Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is *automatically deemed granted* if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man -- some over 2,000 feet tall. The FCC claims that these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Nease, Harold Furchtgott-Roth, Michael Powell, and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tobin at the National League of Cities (202-696-3194); Eileen Huggard at the National Association of Telecommunications Officers and Advisors (703-506-3275); Robert Fogel at the National Association of Counties (202-293-6220); Kevin McCarty at the U.S. Conference of Mayors (202-293-7330); and Cheryl Maynard at the American Planning Association (202-872-0611). Please feel free to call them if you have any questions.

Very truly yours,

Timothy J. Thompson, Staff Planner

cc: See attached list.

Copy List

Senator John McCain
241 SROB
Washington, DC 20510-0303

Senator Conrad Burns
187 SDOB
Washington, DC 20510-2603

Senator Kay Bailey Hutchison
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Washington, DC 20515-2201

Representative Joe Barton
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Ms. Cheryl Maynard
Government Affairs Coordinator
American Planning Association
1776 Massachusetts Ave. NW, 4th Floor
Washington, DC 20036



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Town of Goffstown

TOWN OFFICES

October 28, 1997

The Honorable Senator Judd Gregg
28 Webster Street
Manchester, N.H. 03104

Dear Senator Gregg:

We ~~would like to~~ would like to share the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" ~~for all cellular, radio and broadcast towers~~. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings. The Town of Goffstown, like many N.H. communities, took special care in constructing its zoning regulations to not exceed its authority ~~granted under the 1996 Telecommunications Act~~, but to be administered in accordance with the Act. We hope that you will do everything in your power to preserve local authority over these telecommunication structures as was intended by the Act.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it has "reason to believe" ~~that the FCC is saying that it has "reason to believe"~~ that the reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Tower- Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

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Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit application. Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV Stations to switch to high definition television quickly. But the FCC's own research and studies indicate that there is no way the FCC broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

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Very truly yours,


Gosselin McKee, Chairman
Goffstown Planning Board

cc: Board of Selectmen
Zoning Board of Adjustment

JUDD GREGG
NEW HAMPSHIRE

CHIEF DEPUTY WHIP

COMMITTEES:

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January 20, 1998

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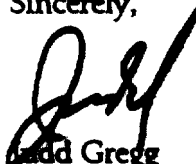
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October 30, 1997

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Representative Joe Barton
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Washington, DC 20515-4306

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Assistant Executive Director
U.S. Conference of Mayors
1620 Eye Street, 4th Floor
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Ms. Cheryl Maynard
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American Planning Association
1776 Massachusetts Ave. NW, 4th Floor
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Town of Goffstown

TOWN OFFICES

October 28, 1997

The Honorable Senator Judd Gregg
28 Webster Street
Manchester, N.H. 03104

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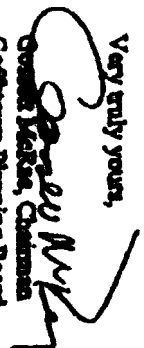
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Very truly yours,


Susan Nease, Chairman
Gothtown Planning Board

cc: Board of Selectmen
Zoning Board of Adjustment